

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17005
[Redacted])	
Petitioner.)	DECISION
)	
)	

On September 17, 2002, the Income Tax Audit Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting an Idaho income tax deficiency, plus late-filing penalty and interest, in the total amount of \$7,148 for the 1995 and 1996 taxable years. On November 13, 2002, the taxpayer filed a timely appeal and petition for redetermination. An informal hearing was held via telephone on June 24, 2003.

On October 29, 2003, the Tax Commission informed the taxpayer's representative ([Redacted]) that the Commission was preparing to issue its final decision in this matter and that any additional information would need to be provided to the Commission by November 14, 2003. On December 5, 2003, the taxpayer faxed a letter to the Tax Commission stating that Ms. [Redacted] was no longer representing him and requesting that the Commission delay issuing its decision for an additional 90 days. The Tax Commission granted the taxpayer's request and agreed to extend the time period for issuing this final decision to March 20, 2004. After this extension was granted, the Tax Commission received no further correspondence from the taxpayer.

This matter having now been fully submitted, the Tax Commission hereby issues its final decision.

FACTS AND PROCEDURAL HISTORY

The procedural background of this case is relatively long and complex. In 1998 the Income Tax Audit Division of the Idaho State Tax Commission began a non-filer investigation of Mr. [Redacted]. The non-filer investigation was prompted by the receipt of federal form 1099 information [Redacted] indicating that Mr. [Redacted] had received gross proceeds in the amount of \$103,000 during 1996 from the sale of real property located in Idaho. At the time the non-filer investigation was started, it was believed that Mr. [Redacted] had been a resident of [Redacted] State during the 1996 taxable year. As a result, the non-filer investigation focused on whether Mr. [Redacted] was required to file a non-resident Idaho individual income tax return to report the gain from the sale of the Idaho real property.

On October 30, 1998, the Commission's audit staff sent Mr. [Redacted] a letter seeking additional information relating to the sale of the Idaho real property. That letter provided in relevant portion as follows:

We have information which indicates that you may have sold property located in Idaho during the tax year 1996. As of the date of this letter, we have no record of receiving your Idaho income tax return for the year of sale.

....

If the sale was your personal residence, please provide a copy of federal form 2119.

If you have not filed and you are required to do so, please notify me so I may send you forms and instructions.

Letter from State Tax Commission to [Redacted] dated October 30, 1998. After receiving no response to that initial letter, the audit staff sent follow-up letters to Mr. [Redacted] on May 13, 1999, December 16, 1999, March 27, 2001, and June 1, 2001. Mr. [Redacted] did not respond to any of this correspondence. Therefore, on July 19, 2001, the audit staff issued a Notice of

Deficiency Determination to Mr. [Redacted] asserting that he owed Idaho income tax, late-filing penalties, and interest on the entire \$103,000 gross proceeds from the sale of the Idaho real property.

Mr. [Redacted] did not file a protest of the July 19, 2001, Notice of Deficiency Determination, and that Deficiency Determination hardened into a due and owing tax assessment. See Idaho Code §§ 63-3045(5) and 63-3045B(1). (A taxpayer has 63 days to file a protest of a Notice of Deficiency Determination and, if no protest is filed, the deficiency becomes final and subject to collection on the day following the end of the protest period.). The account was then transferred to the Tax Commission's Compliance Division for collection.

On December 19, 2001, the Compliance Division sent Mr. [Redacted] a Notice and Demand letter, making demand for payment of the tax, penalty and interest that had been assessed against him for the 1996 taxable year. After receiving that Notice and Demand letter, Mr. [Redacted] had his tax preparer contact the Commission's Compliance Division to contest the tax bill. According to Mr. [Redacted]'s tax preparer, Mr. [Redacted] had already filed an Idaho tax return for 1996 and, therefore, the Commission's assertion that Mr. [Redacted] was a non-filer and that he owed additional income tax was erroneous. As proof that Mr. [Redacted] had already filed a 1996 Idaho return, a copy of the front page of an Idaho part-year resident income tax return was faxed to the compliance officer handling the case. The return was signed by Mr. [Redacted] and was dated May 16, 1997. However, the Tax Commission has no record of receiving that return.¹

¹ Interestingly, the front page of the return indicates that Mr. [Redacted] was a part-year resident of Idaho during 1996 and that he had resided in this state for 11 months during 1996. The Commission has requested that Mr. [Redacted] provide a copy of the entire return so it could determine whether there was a tax due shown on page 2 of the return. To date, Mr. [Redacted] has not provided a complete copy of the return. In any event, Mr. [Redacted] has since dropped his claim that he filed an Idaho income tax return for 1996.

In addition to the front page of the 1996 Idaho part-year resident income tax return faxed to the compliance officer, the preparer also provided a copy of Mr. [Redacted]'s 1996 federal income tax return. Attached to that federal return was a form 2119 [Sale of Your Home] indicating that the Idaho real property at issue was Mr. [Redacted]'s main home at the time it was sold. It was later confirmed that the real property that Mr. [Redacted] sold in 1996 was a two-story, 1920 square-foot, residence located at [Redacted]Idaho.

As a result of the additional information provided by Mr. [Redacted]'s tax preparer, the Tax Commission decided to put the collection proceedings on hold pending further investigation of Mr. [Redacted]'s residency status and his claim that he had actually filed a 1996 Idaho income tax return. This additional investigation uncovered the following facts:

- Mr. [Redacted] had filed as a resident of Idaho for 1992, and had filed as a part-year resident of Idaho in 1993 and 1994.
- The Tax Commission had audited Mr. [Redacted]'s 1993 and 1994 Idaho part-year resident income tax returns and that audit was resolved through a Closing Agreement that made no mention of Mr. [Redacted]'s residency status for 1993 and 1994.
- The Tax Commission had no record of Mr. [Redacted] filing Idaho individual income tax returns for either the 1995 or 1996 taxable years.
- Mr. [Redacted] sold the [Redacted] residence on December 2, 1996, and on December 3, 1996, he purchased a home at [Redacted], Washington.
- Mr. [Redacted] had claimed the Idaho homeowner's property tax exemption on his [Redacted] residence during 1995 and 1996.

Based on this additional investigation, it became apparent that Mr. [Redacted] was either residing in Idaho prior to the sale of his Coeur d'Alene home, or else he was improperly claiming the Idaho homeowner's property tax exemption on that home. On May 22, 2002, the Commission's compliance officer sent a letter to Mr. [Redacted]'s representative explaining that "Mr. [Redacted] cannot be a resident for property tax purposes and be a non-resident for income

tax purposes. Either Mr. [Redacted] needs to file Resident Idaho Income tax returns for 1995 and 1996 or pay restitution to [Redacted] County” for the reduced property tax assessments he received by virtue of claiming the homeowner’s exemption. Letter dated May 22, 2002, from [Redacted] Ultimately no agreement was reached with respect to Mr. [Redacted] either voluntarily filing resident returns or voluntarily reimbursing [Redacted] County. As a result, on September 17, 2002, the Commission’s audit staff issued the Notice of Deficiency Determination that is the subject matter of this administrative protest. In that Deficiency Determination the audit staff asserted that Mr. [Redacted] was a resident of Idaho during 1995 and 1996 and that he owed back taxes, late-filing penalties, and interest in the total amount of \$7,148.

Mr. [Redacted] filed a timely protest of that September 17, 2002, Notice of Deficiency Determination, claiming that he had filed 1995 and 1996 Idaho tax returns in a timely manner and that the three-year statute of limitations for auditing those returns had run. See Protest letter dated November 13, 2002, from [Redacted] to [Redacted] [Redacted]. In subsequent correspondence Mr. [Redacted] also challenged the audit staff’s determination that he was an Idaho resident during 1995 and 1996. See letter dated June 20, 2003, from [Redacted] to [Redacted] [Redacted].

During the telephone informal hearing that was held on June 24, 2003, Mr. [Redacted] stated that he was no longer contending that he had filed 1995 or 1996 Idaho individual income tax returns. As a result, the Commission will not address Mr. [Redacted]’s statute of limitations argument. Mr. [Redacted] has not, however, conceded the residency issue. In addition, Mr. [Redacted] also asserts that the Tax Commission is barred under the doctrine of equitable estoppel from asserting that he is an Idaho resident due to what Mr. [Redacted] perceives as an inconsistent position taken by the Tax Commission in the Closing Agreement entered into to

resolve the audit of Mr. [Redacted]'s 1992 and 1993 part-year resident returns. See letter dated August 22, 2003, from [Redacted] [Redacted] to [Redacted] [Redacted]. Thus, there are two issues to be addressed in this administrative protest. Those two issues are: (1) Whether [Redacted] was a resident of Idaho during 1995 and 1996; and (2) whether the Tax Commission is barred under the doctrine of equitable estoppel from asserting that Mr. [Redacted] was an Idaho resident during 1995 and 1996.

ANALYSIS

A. MR. [Redacted] WAS A RESIDENT OF IDAHO DURING 1995 AND 1996.

Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. See Idaho Code § 63-3002. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. During the 1995 taxable year the term "resident" was defined in the Idaho tax laws as follows:

Resident. – The term "resident," for income tax purposes, means any individual who:

- (a) Has resided in this state for the entire taxable year; or
- (b) Is domiciled in the state of Idaho,

Idaho Code § 63-3013 (1989 & Supp. 1995). Effective for tax years beginning on or after January 1, 1996, the Idaho Legislature changed the definition of the term resident. The Idaho law now reads as follows:

Resident. – (1) The term "resident," for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy

(270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

Idaho Code § 63-3013 (2000).

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.2 (2003). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). A concurrence of three factors must occur to change an individual's domicile. The factors are (1) the intent to abandon the present domicile, (2) the intent to acquire a new domicile, and (3) physical presence in the new domicile. Idaho Income Tax Administrative Rule 030.02.a (IDAPA 35.01.01.030.02.a). See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996) (The Tax Commission's regulation defining domicile is consistent with prior holdings of the Idaho Supreme Court, "with the element of intent divided into two parts.") Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allan v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939). See generally, Restatement 2d Conflict of Laws § 19 comment c (1971). Although not entirely clear, it appears that under Idaho law a change in domicile must be established by a preponderance of the evidence. See Ramsey v. Ramsey, 96 Idaho 672, 535 P.2d 53 (1975).

A person's domicile will normally be that place where they have their true, fixed and permanent home. The term "home" as used in the Restatement 2d Conflict of Laws, means "the place where a person dwells and which is the center of his domestic, social and civil life." Rest., 2d, § 12. The Restatement goes on to provide that "[d]omicil is a place, usually a person's home, to which the rules of Conflict of Laws sometimes accord determinative significance because of the person's identification with that place." Rest., 2d, § 11(1). The comments to this section of the Restatement emphasizes that a person's domicile is usually that person's home.

"A person's domicil is usually the place where he has his home. But some persons have no home in the ordinary sense while others have two or more. Certain persons also lack capacity to acquire a domicil of choice, and in such instances the law may assign them as their domicil a place where their home is not located. (see §§ 22-23). The rule applicable to a person who has two or more dwelling places is stated in § 20.

Rest., 2d, § 11(1), comment 1a. Those comments go on to provide that "[w]hen a person has one home and only one home, his domicil is in the place where his home is, except as stated in § 16,

Comment c and §§ 22-23, relating to domicile in a vehicle and to persons who lack legal capacity to acquire a domicile of choice.” Rest., 2d, § 11(1), comment 1h. Thus, with only a few exceptions, a person who only has one home will be domiciled at that place where his home is.

It is not uncommon for the person whose domicile is at issue to have two or more homes or residences, any of which might be considered his principal home or domicile. The Restatement 2d Conflict of Laws provides a very useful discussion of domicile of choice where an individual has more than one residence. Section 20 of the Restatement provides as follows: “When a person with capacity to acquire a domicile of choice has more than one dwelling place, his domicile is in the earlier dwelling place unless the second dwelling place is his principal home.” The comments to that section of the Restatement also provide some helpful guidance in those cases where the person has two dwelling places, either one of which could conceivably be his principal home. For instance, comment b provides in part as follows:

b. If a person has two dwelling places, any one of the following situations may arise:

1. One dwelling place may be a home in the sense used in this Restatement (see § 12), and the other merely a residence. This is the most common situation of all. It is likely to exist whenever a person has one dwelling place where he lives during the major portion of each year and another which he uses only for weekend and vacation purposes. Here his domicile will be at the dwelling place which is his home.

2. Both dwelling places may be homes in the sense used in this Restatement, but one may be the person’s principal home. In this case his domicile is at the principal home. As between two homes, a person’s principal home is that to which he is more closely related or, stated in other words, that which is more nearly the center of his domestic, social and civil life. This will normally be the home where he and his family spend the greater part of their time. Also significant are such factors as which home is the more spacious, which contains the bulk of the household furnishings, in which has he shown more interest, which home has a way of life, (county life, for example, as opposed to city life) more conducive

to the person's tastes, and from which home does he engage more actively in social and civic affairs, as by voting, holding public office, attending church, belonging to local clubs and the like. The person's own feelings towards the dwelling place are of great importance. His statements in this connection cannot be deemed conclusive, however, since they may have been made to attain some ulterior objective and may not represent his real state of mind (see Special Note following this Section).

....

3. Both dwelling places may have some of the aspects of a home in the sense used in this Restatement and both in more or less equal degree. In this unusual situation, the domicil remains at that one of the two dwelling places which was first established. This is because a domicil, once established, continues until superseded (see § 19), and here there is no basis for preferring the later dwelling place over the earlier one.

Rest., 2d, § 20, comment b.

If an individual has more than one home or dwelling that could be considered his or her primary home, factors that may be considered in determining which dwelling is the individual's true domicile include the following:

1. The nature and use of the home, such as whether it is used as a "vacation home," "second home," or "summer home."
2. Whether the home is owned, rented, or provided free of charge.
3. The size of the home. Generally, as between two or more homes, the larger home is more likely to be considered the individual's principal or primary home.
4. Value of the home. Generally, as between two or more homes, the more valuable home is more likely to be considered the individual's principal or primary home.
5. How much time is spent at each home. Generally, as between two or more homes, the home where the individual spends the greater amount of time is more likely to be considered that individual's principal or primary home.

6. Which home the individual's spouse or minor children view as their primary home. Generally, as between two or more homes, the home that the individual's spouse or minor children regard as their primary home is more likely to be considered that individual's principal or primary home.
7. Which home the individual keeps his pets, valuable artwork, photo albums, hobby equipment, collectibles, and other "near-and-dear" items. Generally, as between two or more homes, the home where the individual maintains most of his "near-and-dear" items is more likely to be considered that individual's principal or primary home.

In the present case, Mr. [Redacted] owned only one home during 1995 and up through early December, 1996. That home was located at [Redacted], [Redacted], Idaho. Mr. [Redacted] contends, however, that he was not actually living at his [Redacted] home during 1995 and 1996 but, instead, was living at the home of a friend in [Redacted], Washington. See Protest letter dated November 13, 2002. (During the years at issue, "Mr. [Redacted] lived and worked in the State of Washington, sometimes going to work on his 'fixer-upper' property to make it sellable. It was sold in December of 1996."). See also Statement dated April 16, 2003, from [Redacted]. ("[Redacted] resided with me at [Redacted] in [Redacted], WA from 1992 to December of 1996. No monies were exchanged in lieu of work performed."). For purposes of this administrative protest, the Commission will assume that Mr. [Redacted] had two residences that could potentially be his primary home and domicile: (1) the [Redacted] home owned by Mr. [Redacted] and (2) the [Redacted] home where Mr. [Redacted] was apparently allowed to stay rent-free. Thus, the question presented is whether the [Redacted] home or the [Redacted] home was Mr. [Redacted]'s primary home and domicile.

According to Mr. [Redacted] legal representative, the facts and circumstances of this case establish that [Redacted] was a resident of the State of Washington during 1995 and 1996.

More specifically, Mr. [Redacted]'s representative contends that:

Mr.[Redacted] resided in [Redacted] Washington from sometime in 1993 until late 1996[.] Mr. [Redacted] and his daughter . . . lived [at] [Redacted] Spokane WA 99223. In December of 1996, they moved to another residence in Washington. At all times subsequent to 1994, Mr. [Redacted]'s employment was entirely in Washington. All W-2s received for 1994 and 1995 bear a Washington address. His address on federal and state tax returns for years 1993 and forward is a Washington address. His daughter, from 1993 until the present, attended school in Washington. She received immunizations from the [Redacted] County Health District.

Under the analysis of the Kirkpatrick [v. Transtector Systems] and Pratt [v. State Tax Com'n] case[s], Mr. [Redacted] was physically present at his residence in Washington during 1995 or 1996. He was not required to file a resident Idaho tax return for those years.

Letter dated June 20, 2003, from [Redacted] to [Redacted].

Unfortunately for Mr. [Redacted], the Commission does not agree. Based on the information currently in the file, the Commission finds that Mr. [Redacted]'s [Redacted] residence was most likely Mr. [Redacted]'s primary home during 1995 and 1996. Factors that led to this conclusion are as follows:

- Mr. [Redacted] has provided no objective evidence to support his claim that he was staying at a friend's home at [Redacted] [Redacted], Washington. While the friend did sign a statement to that effect, Mr. [Redacted] has provided no objective proof such as a Washington driver's license issued prior to 1997, Washington vehicle registration issued prior to 1997, or cancelled checks written prior to 1997 with a pre-printed Washington address.
- There is at least some objective evidence pointing to the [Redacted] home as Mr. [Redacted]'s principal residence and domicile. During 1995 and 1996 Mr. [Redacted] had an Idaho

driver's license which listed his address as [Redacted] [Redacted]; he was listed in the [Redacted] phone book as residing at [Redacted] Street in [Redacted] he was registered to vote in Idaho and actually voted in the November 1996 general election; and he claimed that the [Redacted] home was his main home on the federal form 2119 filed with his 1996 federal individual income tax return.

- On April 11, 1988, Mr. [Redacted] signed and filed with the [Redacted] County Assessor's Office an Idaho "homeowner's exemption" form, claiming the homeowner's property tax exemption on the home he owned at [Redacted] [Redacted]. The homeowner's property tax exemption only applies to owner-occupied real property that is being used as the owner's primary residence. See Idaho Code § 63-602G(2)(a) ("The exemption . . . may be granted only if . . . [t]he residential improvements are owner-occupied and used as the primary dwelling place of the owner") That homeowner's property tax exemption was not removed by Mr. [Redacted] after the date he claims he moved into the [Redacted] home of his friend. Thus, for the 1995 and 1996 taxable years Mr. [Redacted] accepted the benefit of the homeowner's property tax exemption, which is specifically limited to the owner's primary residence.
- While it is true that Mr. [Redacted]'s young daughter was living and going to school in [Redacted], Washington, during 1995 and 1996, it appears likely that she was actually living with her mother who owned a residence in [Redacted] at the time.
- Finally, the Commission is troubled by the 1996 Idaho part-year resident income tax return that was filled out and signed by Mr. [Redacted] but never filed. According to the front page of that return (which is all that Mr. [Redacted] has provided), [Redacted] was residing in Idaho for 11 months during 1996, which is entirely consistent with the fact that he sold his [Redacted] home in early December, 1996, and moved into his new home at [Redacted], Washington.

In the final analysis, the Commission finds that Mr. [Redacted] has not established the necessary intent to abandon his Idaho domicile prior to actually selling his [Redacted] home in early December, 1996. The Commission does find, however, that Mr. [Redacted] changed his domicile from Idaho to Washington effective December 2, 1996, when he sold his [Redacted]

home and moved into his new home in [Redacted], Washington. Thus, the September 17, 2002, Notice of Deficiency Determination will be modified to compute the tax owed by Mr. [Redacted] for 1996 on the basis of having resided in this state for only the first 11 months of that taxable year. Finally, in light of the foregoing findings, the Commission hereby withdraws and vacates the prior Notice of Deficiency Determination issued to Mr. [Redacted] on July 19, 2001. The assessment of taxes relating to that unprotested Notice of Deficiency Determination will be reversed as soon as practicable.

B. THE TAX COMMISSION IS NOT ESTOPPED FROM ASSERTING THAT MR. [Redacted] WAS A RESIDENT OF IDAHO DURING 1995 AND 1996.

The second issue raised in this administrative protest is whether the Tax Commission should be estopped from asserting that Mr. [Redacted] was a resident of Idaho during 1995 and 1996 based on a Closing Agreement that was entered into between the Commission and Mr. [Redacted] resolving an audit of his 1993 and 1994 Idaho returns. According to Mr. [Redacted]'s legal representative, because that prior Closing Agreement did not specify whether Mr. [Redacted] was considered an Idaho resident during 1993 and 1994, "neither Mr. [Redacted] nor [his tax preparer] knew if [[Redacted]] was required to file an Idaho non-resident return for years subsequent to the audit, nor did he keep accurate records of his residence, income and/or expenses. He is now greatly prejudiced." Letter dated August 22, 2003, from [Redacted] to [Redacted].

Equitable estoppel is a court-made doctrine that is based on the concept that it would be inequitable to allow a person to induce reliance by taking a certain position and, thereafter, take an inconsistent position when it becomes advantageous to do so. Regjovich v. First Western Investments, 134 Idaho 154, 158, 997 P.2d 615, 619 (2000). Equitable estoppel can only be applied if all four of the following elements are present: (1) There must be a false representation

or concealment of a material fact, with the party making the false representation or concealment having knowledge of the truth. (2) The party asserting estoppel did not know or could not discover the truth. (3) The false representation or concealment was made with intent that it be relied upon. (4) The party to whom the representation was made or from whom facts were concealed relied and acted upon the representation or concealment to his or her prejudice. Young Electric Sign Co. v. State, 135 Idaho 804, 810, 25 P.3d 117, 123 (2001); Regjovich v. First Western Invest., Inc., 134 Idaho 154, 158, 997 P.2d 615, 619 (2000) (all elements must be satisfied).

It is well established in Idaho that estoppel cannot be applied against the State when the State is acting in a governmental (as opposed to proprietary) role. As stated by the Idaho Supreme Court in State v. Adams, 90 Idaho 195, 409 P.2d 415 (1965):

Nor can the state be estopped from claiming and collecting from the county such sums as the balance of the amount of the 1962 taxes apportioned to and collected by the county, even through representatives of the State Tax Commission and of the office of the Attorney General were present and were consulting at various stages of the hearings on the mining company's tax appeals. Equitable estoppel may not ordinarily be invoked against a governmental or public agency functioning in a sovereign or governmental capacity.

In the levy and imposition of taxes, the state acts in its sovereign capacity, and hence, in an action for the collection thereof, cannot be subject to an equitable estoppel.

The government is not estopped by previous acts or conduct of its agents with reference to the determination of tax liabilities or by failure to collect the tax, nor will the mistakes or misinformation of its officers estop it from collecting the tax.

Id. at 200 – 201, 409 P.2d at _____. (Citations and internal quotations omitted.) State v. Adams has never been overruled or seriously called into question and remains the law of Idaho. As a result, Mr. [Redacted]'s estoppel argument fails as a matter of law.

But even if the general rule set out in State v. Adams was not the controlling law on this question, equitable estoppel would still not apply in this case because none of the elements required under that equitable doctrine have been met. The Tax Commission did not make any false representation or concealment of fact regarding Mr. [Redacted]'s residency status in the Closing Agreement resolving the 1993 – 1994 audit. While Mr. [Redacted] may have been confused as to how the amount he was required to pay under that Closing Agreement was computed, the Commission finds nothing in the record to indicate that there were any false representations made to Mr. [Redacted] or any concealment of facts. Absent a false representation or concealment of a material fact, there can be no equitable estoppel. Furthermore, Mr. [Redacted] has presented no evidence to establish that any of the other necessary elements have been met. Therefore, even if estoppel could be asserted against the Tax Commission in this proceeding, Mr. [Redacted] has simply failed to prove his case.

ORDER

WHEREFORE, the Notice of Deficiency Determination dated September 17, 2002, is hereby MODIFIED and as so Modified is APPROVED, AFFIRMED AND MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following taxes, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1995	\$1,314	\$329	\$1,055	\$2,698
1996	2,583	646	1,861	<u>5,090</u>
TOTAL AMOUNT DUE				<u>\$7,788</u>

Interest is calculated through March 31, 2004, and will continue to accrue at the rate set out in Idaho Code § 63-3045(6)(b).

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[REDACTED]

Receipt No.
